IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

FRIDAY, THE 30TH MARCH, 2007 / 9TH CHAITHRA, 1929

OP.No. 38385 of 2002(T)

PETITIONER:

M/S. HINDUSTAN FOUNDRY PRODUCTS
ENGINEERING AND FOUNDERS, POOTHOL, TRICHUR,
REPRESENTED BY ITS MANAGING PARTNER,
TONY JOHN ALAPPATT, S/O. LATE A.JOHN ALAPPATT,
AGED 45, RESIDING ALAPPATT THOPPIL HOUSE,
CHURCH ROAD, KARANJIRA P.O., TRICHUR-2.

BY ADV. SRI.P.F.THOMAS
SRI.GOPAKUMAR.G.
SMT.A.K.RANI
SRI.RAYNOLD FERNANDEZ

RESPONDENTS:

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1. GENERAL SECRETARY,
TRICHUR ENGINEERING WORKERS UNION,
MANNADIAR LANE, TRICHUR-1.

2. INDUSTRIAL TRIBUNAL, PALAKKAD.

BY ADV. SRI.RENJITH THAMPAN
BY SR.GOVERNMENT PLEADER SRI.P.K.RAVIKRISHNAN.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 22/03/2007, THE COURT ON THE 30/03/2007 DELIVERED THE FOLLOWING:

ORDER ON CMP NO.64835/2002 IN OP NO.38385/2002 T

CLOSED

30-03-2007. sd/-S.Siri Jagan, Judge.

APPENDIX (OP NO.38385 OF 2002)

PETITIONER'S EXHIBITS:

Ext.P1: Copy of Show Cause Notice dtd.25.5.1999.

Ext.P2: Copy of the reply notice dtd.29.5.1999.

Ext.P3: Copy of the dismissal order dtd.31.5.1999.

Ext.P4: Copy of the claim statement filed by the Union in I.D.No.22/2001 dtd.9.4.2001.

Ext.P5: Copy of the written statement filed by the Management in I.D.No.22/2001 dtd.6.7.2001.

Ext.P6: Copy of the deposition of MW1 in I.D.No.22/2001 dtd.15.7.2002.

Ext.P7: Copy of the deposition of MW2 in I.D.No.22/2001 dtd.15.7.2002.

Ext.P8: Copy of the deposition of MW3 in I.D.No.22/2001 dtd.12.8.2002.

Ext.P9: Copy of the Award in I.D.No.22/2001 dtd.19.9.2002.

-True Copy-

P.A.to Judge.

S. SIRI JAGAN, J.

O.P.NO. 38385 OF 2002

Dated this the 30th day of March, 2007

J U D G M E N T

The Management in I.D.No.22/2001 on the files of the Industrial Tribunal, Palakkad is the petitioner herein. The petitioner is challenging Ext.P9 award passed by the Tribunal in the said I.D.

The issue referred for adjudication was:

> "Whether the action of the management to refuse advances and denial of employment to the 3 workers, Sarvasree B.A.Ouseph, M.R.Bhoopesh and P.B.Preman, is justifiable? If not, what are the remedies entitled to them."

2. Before the Tribunal, both sides confined their submissions on the issue of denial of employment only, leaving out the issue regarding refusal of advances. Based on the pleadings filed by the parties, the Tribunal found that the real issue was regarding the dismissal of the three workers. The union, in its claim statement, stated that the three workers were dismissed from service without

conducting a domestic enquiry and the charges levelled against them were false. In their written statement, the management contended that the three workers wrongfully confined the Managing Partner of the management firm on 24.5.1999 from 5.15 p.m. to 5.30 p.m., with a demand to mark their attendance and since it was the Managing Partner himself who has been wrongfully confined, it was not necessary to conduct any enquiry and therefore the workers were dismissed from service after issuing a show cause notice and after considering their reply.

3. After adjudication, the Tribunal found that on 24.5.1999, the three workers exerted some pressure on the Managing Partner to get their attendance marked on that day and since, according to the Tribunal, the said misconduct was not grave enough to warrant the punishment of dismissal from service, interfered with the punishment exercising powers under Section 11A of the

Industrial Disputes Act (hereinafter referred to as 'the Act') and directed the management to reinstate the workmen with 50% backwages, as per Ext.P9 award impugned by the management in this original petition.

4. The petitioner-management challenges the award on two grounds. The first is that the Tribunal travelled beyond the scope of the issue referred for adjudication in so far as the issue referred was one of denial of employment, whereas what was adjudicated upon by the Tribunal was the issue of dismissal of the three workmen, which is not permissible as per law as settled by decisions of the Supreme Court. The second contention is that the Tribunal exceeded his jurisdiction in interfering with the punishment imposed by the management as the misconduct was one of wrongful confinement of the Managing Partner which was grave enough to deserve no less a punishment than dismissal from service.

5. The first respondent- Union opposes both the contentions. According to them, there is no essential difference between denial of employment and dismissal from service and therefore, it cannot be said that the Tribunal adjudicated upon an issue not referred to it for adjudication. They would submit that there was no contention by the management before the Tribunal that the dispute between the parties was regarding denial of employment and not dismissal of workmen even after the union filed their claim statement challenging the dismissal of the workmen and that in fact in their written statement, the management also proceeded on the basis that the issue is dismissal of the workmen and sought to justify the dismissal. They also point out that there was no domestic enquiry conducted by the management and they sought to prove the charges against the workmen by adducing evidence in support of the charges. Regarding the second contention, they would contend that putting

pressure on the Managing Partner, that too, for a period of only 15 minutes, which alone was found by the Tribunal, cannot be termed to be a misconduct warranting dismissal from service and therefore the punishment imposed was 'shockingly disproportionate' to the gravity of the misconduct which justified the Tribunal's interference on the punishment imposed by the management, in exercise of powers under Section 11A of the Act. They also point out that as is clear from the evidence of the Managing Partner himself, he had acceded to the demand of the workers for marking attendance, as he was in a hurry to leave for attending a marriage party for which his wife was waiting outside.

6. I deem it fit to refer to the background in which the dispute arose, in order to appreciate the contentions of the parties in their proper perspective. On 24.5.1999, the father of a co-worker of the workmen involved in the dispute died and some of the workers

including the three workers wanted to attend the funeral. The management admittedly granted permission to six workers for attending the funeral, which was obviously during working hours. The three workmen also went for the funeral in addition to the six, since according to them, their superior, MW2 granted them also permission. However, attendance was not marked for these three workers for half a day and since MW2 told them to meet the Managing Partner as he is to give them attendance, they met the managing partner on 24.5.1999 itself at 5.15 p.m. demanding marking of attendance for the other half of the day also. At first, the Managing partner refused, but later he marked attendance. According to the workers, he conceded the demand and marked attendance voluntarily. But MW1 claimed that he was forced to do so as the workers detained him and he had to attend a marriage party with his wife, who was waiting outside. On the next day, show cause notices were issued,

explanations were obtained and the workers were dismissed from service without any enquiry.

7. I shall examine the two contentions of the petitioner in the above factual background. The counsel for the petitioner argues that the law that the Labour Court/Industrial Tribunal cannot go behind the issue referred for adjudication and enlarge the scope of the reference is so well settled as to obviate the necessity to quote authorities, for which there is no dearth. However, he brings to my attention one of the recent Supreme Court decisions, namely **State Bank of Bikaner and Jaipur** v. **Om Praksh Sharma** reported in (2006) 5 SCC 123. In that decision the issue referred at the instance of a retrenched workman was the legality of appointment of another person in his place in violation of S.25-H of the Act. After holding that S.25-H of the Act was not violated, the Labour Court went on to decide whether the management had complied with R.77 of the Industrial

Disputes Rules which the Supreme Court held, was without jurisdiction as the Labour Court could not have passed an order going beyond the terms of reference.

8. Then, counsel relies on a Division Bench decision of this court reported in **Abdul Rahiman Kunju.M.** v. **State of Kerala and others** reported in 1998 II LLJ 908, which held that when the Government referred a dispute relating to "*denial of employment*" to workmen, the subsequent modification of that reference as relating to "*dismissal of workmen*" by the Government is without jurisdiction, which according to counsel, would show that the Division Bench held that the issue of denial of employment is distinct from that of dismissal of workmen and therefore, on a reference relating to denial of employment, the Tribunal could not have adjudicated the issue of dismissal of workmen.

9. In answer to this, the counsel for the respondent cites a single Bench decision of this court in

Kollam Jilla Hotel & Shop Workers Union v. **Industrial Tribunal** (1997(2) KLT 535) and a Division Bench decision of the Bombay High Court in **Sheshrao Bhaduji Hatwar** v. **Presiding Officer, First Labour Court and Ors.** (1992 (I) LLJ 672), which is relied on by the Single Judge in Kollam Jilla Hotel and Shop Workers Unions' case (cited supra). The learned counsel points out that both the decisions were referred to by the Division Bench in Abdul Rahiman Kunju's case (cited supra) relied upon by the petitioner and the Division Bench did not disapprove those decisions and therefore, these decisions, which are directly on point in respect of the issue involved, should be followed instead of the Division Bench decision, which in any case relates to a different issue as to whether the Government has power to amend or modify a reference already referred for adjudication.

10. I have considered the rival contentions. Although in paragraph 5 of the writ petition the petitioner

had in fact raised a contention to the effect that since the issue referred was one of denial of employment, by adjudicating a different issue, namely dismissal of the workmen, the Tribunal exceeded its jurisdiction, in Ext.P5 written statement filed by the petitioner- management, there is not even a whisper about such a contention despite the fact that in Ext.P4 claim statement of the union, the exact case of the union was that the workmen involved were dismissed from service without justification. On the other hand, from Ext.P9 award, it is clear that both sides made submissions on the issue of dismissal of the three workers. Although the petitioner would contend that even in the absence of such a contention in the written statement, the Tribunal could not have travelled beyond the issue referred for adjudication, I am of opinion that it is for the parties to join issue on the subject matter of the dispute in their respective statements before the Tribunal and in the absence of a

specific plea in the written statement of the management that the dispute raised in the claim statement is not the issue referred for adjudication, it must be presumed that the parties submitted to the jurisdiction of the Tribunal on the issue as per the pleadings and the petitioner-management cannot now canvass that objection in the original petition without having raised it before the Tribunal in the first instance. I also note that in Ext.P5, the only attempt of the petitioner- management was to justify the dismissal of the workmen. They also adduced evidence to the effect that the workmen were dismissed from service for grave acts of misconduct. In fact, in Abdul Rahiman Kunju's case, (cited supra) the Division Bench distinguished the Kollam Jilla Hotel and Shop Workers Union's case (cited supra), on the ground that the learned Single Judge only held that if matters are disputed, it is appropriate to file objections before the Industrial Tribunal or Labour Court and after adducing

evidence on these points, if the Tribunal comes to the conclusion that there is no valid industrial dispute, it can pass an award and the Tribunal cannot enter upon the consideration as to whether the preconditions empowering the State Government to make the reference existed which would show that the Division Bench also approved of the legal position that unless the management sets up a case in their pleadings regarding the competency of the Tribunal to adjudicate the issue raised by the union in their statement, such a contention need not be considered. Therefore, without the management raising a specific objection as to the jurisdiction to adjudicate upon the claim of the union in their claim statement, on the ground that the issue referred is not the one raised in the claim statement, the Tribunal cannot be found fault with for dealing with the admitted dispute on which the parties joined issue in the I.D.

11. Apart from that, I am of opinion that when the issue referred for adjudication is denial of employment, it cannot be said that it would not take in dismissal of the workmen as well. Of course, nobody can now dispute the proposition of law that the Labour Court/Industrial Tribunal cannot go behind the issue referred for adjudication or enlarge the scope of reference, since that proposition is so well settled by decisions of the Supreme Court as in the case of Om Prakash Sharma's case cited by the petitioner. But, here the question is whether when considering the issue 'denial of employment', the Tribunal was justified in adjudicating the issue of 'dismissal of the workmen'. According to me, the Tribunal was justified in adjudicating that issue since from the pleadings before it, there could not be any doubt that the only dispute between the parties was dismissal of the workmen and nothing else. The wording used in the reference order itself may not be conclusive in deciding that. "Denial of

employment" is the genus of which "dismissal" is a specie. The genus of "denial of employment" takes in many species such as "dismissal", "termination of service", "retrenchment", "discharge", "loss of lien", "removal from the rolls", "superannuation" etc. If the parties have joined issue at the time of raising of the industrial dispute itself before the Conciliation Officer on the question of dismissal of the workmen concerned, and no other dispute was ever in the contemplation of the parties at any time, just because the Government referred the issue in the general term "denial of employment", the Tribunal would not either be travelling beyond the issue referred or enlarging the scope of reference, since the Tribunal was only adjudicating the real issue between the parties which was nothing, but dismissal of the workmen, about which, as is evident from Ext.P5 written statement of the management there was no doubt whatsoever even in the mind of the management.

12. As is clear from the original petition itself, the dispute referred for adjudication had its origin in Ext.P1 show cause notice, by which the workmen were directed to show cause why they should not be dismissed for the misconducts stated therein. This was followed by Ext.P2 explanation and Ext.P3 order of dismissal which led to the dispute and the reference to the Labour Court. On the face of these admitted facts, it is idle for the petitioner to contend that the Tribunal has travelled beyond the scope of reference, especially since the petitioner had no case that apart from the dispute regarding dismissal of workmen, there was some other issue to which the management had some other defence other than justifying the dismissal by proving the misconduct. In any event, the petitioner- management was not in any way prejudiced by such adjudication of the real issue between the parties.

13. In this connection it would be useful to refer to

some case law on the subject. In the decision of the Supreme Court in **Express Newspapers Ltd.** v. **Their workmen, staff and others** (1962 II LLJ 227), one of the issues referred for adjudication was as to whether the strike of the workman and consequent lock out by the management was justified. While holding that this reference did not preclude the tribunal from entertaining a plea of the management that what it did was in fact not a lock out, but a closure, a Bench of three Judges held thus:

> "It may be conceded that the wording of the issue is in-artistic and unfortunate. As it is worded, it, no doubt, prima facie gives an impression that the enquiry on the issue has to proceed on the assumption that the conduct of the appellant amounts to a lock out and this argument is somewhat strengthened by the ill-advised and unfortunate order passed by the State Government under Section 10(3). It is hardly necessary to emphasise that since the jurisdiction of the Industrial Tribunal in dealing with industrial disputes referred to it under Section 10 is limited by Section 10(4) to the points specifically mentioned in the

> reference and matters incidental thereto, the appropriate Government should frame the relevant orders of reference carefully and the questions which are intended to be tried by the Tribunal should be so worded as to leave no scope for ambiguity or controversy. An order of reference hastily drawn or drawn in a casual manner often gives rise to unnecessary disputes and thereby prolongs the life of industrial adjudication which must always be avoided. Even so, when the question of this kind is raised before the Courts, the Courts must attempt to construe the reference not too technically or in a pedantic manner, but fairly and reasonably."
>
> (emphasis supplied)

14. Again, in the decision of the Supreme Court in **Delhi Cloth and General Mills Co. Ltd.** v. **Their workmen and others** (1967 I LLJ 423), it was held thus:-

> "In our opinion, the tribunal must, in any event, look to the pleadings of the parties to find out the exact nature of the dispute, because in most cases, the order of reference is

> so cryptic that it is impossible to cull out therefrom the various points about which the parties were at variance leading to the trouble. In this case, the order of reference was based on the report of the Conciliation Officer and it was certainly open to the management to show that the dispute which had been referred was not an industrial dispute at all so as to attract jurisdiction under the Industrial Disputes Act. But the parties cannot be allowed to go a stage further and contend that the foundation of the dispute mentioned in the order of reference was non-existent and that the true dispute was something else. Under S.10(4) of the Act, it is not competent to the tribunal to entertain such a question."

Following this decision, a Division Bench of the Bombay High Court held thus in S.B.Hatwar's case (cited supra):-

> "7. Legal position is thus clear that the mere wording of the reference is not decisive in the matter of tenability of a reference. It may contain the defence or may not. If points of difference are discernible from the material before the Court or Tribunal, it has only one duty and that is to decide the points on merits and not to be astute to discover formal defects in the wording of the reference.

> From the order of reference dated December 6,1982 made in the case at hand, it is clear that the Schedule referred to the demand of the worker. It has reference also to the report of the Conciliation Officer which spells out the controversy between the parties. In this background, it cannot be said that the reference is made on the assumption that it was a case of termination and the only point left for adjudication was about the nature of relief to be granted to the workman. Undoubtedly, the reference is not happily worded. Unfortunately, that is generally the case as Supreme Court has observed. But that will not justify short-circuiting the reference by ignoring the basic background and subjecting the poor workman to untold misery and hardship involved in moving the machinery over again after a period of 8 years. That would be wholly unjust and empty formality. Even in civil jurisprudence mere framing of a vague issue does not vitiate the trial in the absence of prejudice."

A learned Single Judge of this Court in Kollam Jilla Hotel and Shop Workers Union's case (cited supra) relying upon the above two decisions held thus:-

> "The next defect in the order of reference found by the Tribunal was

that the workers were actually dismissed but what is referred is denial of employment. Denial of employment of the workers by Management can be by different methods. It can be by dismissal, discharge, superannuation, illegally disallowing the employee to attend the company, by removal of name from the roll etc. Dismissal of an employee is one method of denial of employment. If it is found that worker is dismissed what is to be considered is whether denial of employment by way of dismissal is correct or not. Therefore, it cannot be stated that the employees were dismissed and therefore, there is no denial of employment. Tribunal has to adjudicate the dispute on merit. As held by the Division Bench of the Bombay High Court in Sheshrao Bhaduji Hatwar v. Presiding Officer, First Labour Court and Ors. (1992(1) LLJ 672) mere wording of the reference is not decisive in the matter of tenability of a reference. Even though Tribunal cannot go beyond the order of reference, if points of difference are discernible from the material before it, it has only one duty and that is to decide the points on merit and not to find out some technical defects in the wording of reference, subjecting the poor workman to hardship involved in moving the machinery again. Reference can be made in wider terms.

> In many disputes, the reference is cryptic and is not properly worded. But, in such case, the Tribunal should look into the pleading and find out the exact nature of pleading, of the petitioner to find out the exact nature of dispute instead of refusing to answer the reference on merits held in Delhi Cloth and General Mills Co.Ltd & their Workmen and Ors. (1967 (1) LLJ 423 at page 431)."

I respectfully agree with the views expressed by the learned Judge in that decision as also that of the Bombay High Court in S.B.Hatwar's case, which perfectly accords with the principles laid down by the Supreme Court in the two decisions quoted supra on the very subject.

15. The case of Abdul Rahiman Kunju's case (cited supra) relied upon by the counsel for the petitioner is clearly distinguishable on facts. That was a case where the question in issue was whether Government was justified in amending the issue referred for adjudication after the parties had filed their pleadings before the Industrial Tribunal. Of course, the original issue referred

was 'denial of employment' which was later modified as a dispute relating to “Dismissal of workmen”. Paragraph 4 (E) of the judgment which contained the contention of the management would demonstrate the distinguishing feature of that case.

> “(E) The view taken by the learned single Judge in paragraph 7 of the Judgment that the present challenge is only technical and no prejudice is caused to the appellant is not correct. In the reference of 'denial of employment', the only thing the appellant has to show is that the fourth respondent, as a matter of fact, has abandoned her work and hence, there is no question of denial of employment. The justifiability or otherwise of the disciplinary proceedings and the ultimate order of dismissal need not be a subject matter of adjudication of the first reference of 'denial of employment' and if the reference under Ext.P7 is to be adjudicated, necessarily the Tribunal will have to go into the correctness of the disciplinary proceedings and the ultimate decision taken by the management in dismissing the fourth respondent from service. The evidence to be adduced before the Tribunal for adjudication of the

> reference under Ext.P3 is totally different in adjudication of the reference under Ext.P7. Therefore, it is submitted that prejudice is caused to the appellant by the modification of the reference substantially changing the issue to be adjudicated made by Ext.P7."

In fact, a reading of the facts of that case would show that when a show cause notice containing allegations of misconduct was attempted to be given to the workman, she did not receive it and went from the factory without permission and she did not turn up for work from November 28,1988 onwards, although later on pursuant to an enquiry conducted, she was also dismissed from service on July 18,1989. Therefore, it is clear that on the issue of denial of employment, the management had a valid defence that the workman had abandoned employment which defence was prejudiced by the modification of the reference, which is the reason for holding that the modification of the reference was bad.

16. In any event, if that decision is to be taken as laying down the law that on a reference of 'denial of employment', the Labour Court/Industrial Tribunal cannot enter a finding as to the validity of dismissal, that would run counter to the Supreme Court decisions on the subject referred to above and would cause manifest injustice to the workmen, who all along canvassed only the dispute against the dismissal and for no fault of theirs, because of the carelessness or incompetence or ignorance of the person drafting the reference order the issue was referred as 'denial of employment'.

17. The fallaciousness of holding that 'dismissal' is different from 'denial of employment' can be easily demonstrated by reference to Section 2A of the Industrial Disputes Act. Section 2A reads thus:

> "2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute.- Where any employer discharges, dismisses,

> retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute."

Take the example of a workman who is not a member of any trade union who could espouse his cause. Suppose an unscrupulous employer simply asks him not to come for work denying him employment. If the reasoning that only discharge, dismissal, retrenchment and other termination of service alone would come under Section 2A of the Act and not denial of employment, then the workman would be left high and dry without any remedy at all since except in cases falling under Section 2A of the Act, he cannot individually raise an industrial dispute, he having no support from any union to espouse his cause. I am sure that, that cannot be the intention of the legislation. By denying employment, the management is

also terminating the service of the workman. Since Industrial Disputes Act is a beneficial legislation intended for protection of the workmen while ensuring industrial peace, an interpretation that would advance the said cause should be adopted and relief cannot be denied purely on technical grounds arising from the wording used by the Government while drafting the reference order which may be totally unintentional and due to lack of proper application of mind, or lack of knowledge or experience of the officer concerned in drafting the issue on the basis of the report of the Conciliation Officer.

18. Viewed thus, considering the background of the dispute, there cannot be any doubt whatsoever that the word 'denial of employment' used in the order of reference referred only to the 'dismissal of the workmen' and nothing else. That being so, the contention of the petitioner-management has absolutely no merit whatsoever and is only an attempt to deny justice to the

workmen on pure technicalities which cannot be countenanced in law.

19. Having repelled the first contention of the management, I shall now move on to the second one as to whether the Tribunal was justified in interfering with the punishment imposed on the workmen in exercise of its powers under Section 11 A of the Act.

20. It is true that of late the Supreme Court has taken a stricter view on the question of deciding proportionality of punishment in an industrial dispute. Formerly, the test was as to whether the punishment was proportionate to the gravity of the misconduct. The decision of **Rama Kant Misra** v. **State of Uttar Pradesh and others** (1982) 3 SCC 346 would be an indicator of such a view prevalent during the 80's. Paragraphs 6 and 7 of that decision holds thus:

> "6. The punishment must be for misconduct. To some extent, misconduct is a civil crime which is visited with civil and pecuniary

consequences. In this case, it has resulted in dismissal from service. In order to avoid the charge of vindictiveness, justice, equity and fair play demand that punishment must always be commensurate with the gravity of the offence charged. In the development of industrial relation norms, we have moved far from the days when quantum of punishment was considered a managerial function with the courts having no power to substitute their own decision in place of that of the management. More often the courts found that while the misconduct is proved, the punishment was disproportionately heavy. As the situation then stood, courts remained powerless and had to be passive sufferers incapable to curing the injustice. Parliament stepped in and enacted Section 11-A of the Industrial Disputes Act which reads as under:

> 11-A Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied

> that the order of discharge or dismissal was not justified, it may, by its award, set asde the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require.

7. It is now crystal clear that the labour court has the jurisdiction and power to substitute its measure of punishment in place of the managerial wisdom once it is satisfied that the order of discharge or dismissal was not justified in the facts and circumstances of the case. And this Court is at present exercising jurisdiction under Article 136 over the decision of the labour court. Therefore, this Court can examine whether the labour court has properly approached the matter for exercising or refusing to exercise its power under Section 11-A. Before we can exercise the discretion conferred by Section 11-A, the Court has to be satisfied that the order of discharge or dismissal was not justified in the facts and circumstances of the case. These words indicate that even though misconduct is proved and a penalty has to be imposed, the extreme

> penalty of dismissal or discharge was not justified in the facts and circumstances of the case meaning thereby that the punishment was either disproportionately heavy or excessive. As stated earlier, it is a well recognised principle of jurisprudence which permits penalty to be imposed for misconduct that the penalty must be commensurate with the gravity of the offence charged."

That view has now changed and the Supreme Court has moved on to a more stricter view changing the test applicable as one of deciding whether the punishment imposed by the management is 'shockingly disproportionate' to the gravity of the misconduct, which alone would qualify for interference under Section 11A of the Act. The law on the subject is succinctly put by a recent decision of a Bench of three Judges of the Supreme Court in **M.P.Electricity Board v. Jagadesh Chandra Sharma** (2005) 3 SCC 401 thus:

> "8. The question then is, whether the interference with the punishment by the Labour Court was justified? In other words, the question is whether the punishment imposed was so harsh

or so disproportionate to the charge proved, that it warranted or justified interference by the Labour Court? Here, it had been clearly found that the employee during work, had hit his superior officer with a tension screw on his back and on his nose leaving him with a bleeding and broken nose. It has also been found that this incident was followed by the unauthorised absence of the employee. It is in the context of these charges found established that the punishment of termination was imposed on the employee. The jurisdiction under Section 107-A of the Act to interfere with punishment when it is a discharge or dismissal can be exercised by the Labour Court only when it is satisfied that the discharge or dismissal is not justified. Similarly, the High Court gets jurisdiction to interfere with the punishment in exercise of its jurisdiction under Article 226 of the Constitution only when it finds that the punishment imposed, is shockingly disproportionate to the charge proved. These aspects are well settled. In U.P.S.R.T.C. v. Subhash Chandra Sharma, this Court, after referring to the scope of interference with punishment under Section 11-A of the Industrial Disputes Act, held that the Labour Court was not justified in interfering with the order of removal from service when the charge against

the employee stood proved. It was also held that the jurisdiction vested with the Labour Court to interfere with punishment was not to be exercised capriciously and arbitrarily. It was necessary, in a case where the Labour Court finds the charge proved, for a conclusion to be arrived at that the punishment was shockingly disproportionate to the nature of the charge found proved, before it could interfere to reduce the punishment. In Krishnakali Tea Estate v. Akhil Bharatiya Chah Mazdoor Sangh, this Court after referring to the decision in State of Rajasthan v. B.K.Meena also pointed out the difference between the approaches to be made in a criminal proceeding and a disciplinary proceeding. This Court also pointed out that when charges proved were grave, vis-a-vis the establishment, interference with punishment of dismissal could not be justified. In Bharat Forge Co.Ltd. v. Uttam Manohar Nakate, this Court again reiterated that the jurisdiction to interfere with the punishment should be exercised only when the punishment is shockingly disproportionate and that each case had to be decided on its facts. This Court also indicated that the Labour Court or the Industrial Tribunal, as the case may be, in terms of the provisions of the Act, had to act within the four corners thereof. It could not sit in

appeal over the decision of the employer unless there existed a statutory provision in that behalf. The Tribunal or the Labour Court could not interfere with the quantum of punishment based on irrational or extraneous factors and certainly not on what it considers a compassionate ground. It is not necessary to multiply authorities on this question, since the matter has been dealt with in detail in a recent decision of this court in Mahindra and Mahindra Ltd. v. N.B.Narawade. This Court summed up the position thus: (SCC p.141, para 20)

> "20. It is no doubt true that after introduction of Section 11-A in the Industrial Disputes Act, certain amount of discretion is vested with the Labour Court/Industrial Tribunal in interfering with the quantum of punishment awarded by the management where the workman concerned is found guilty of misconduct. The said area of discretion has been very well defined by the various judgments of this Court referred to hereinabove and it is certainly not unlimited as has been observed by the Division Bench of High Court. The discretion which can be exercised under Section 11-A is available only on the existence of certain factors like punishment

> being disproportionate to the gravity of misconduct so as to disturb the conscience of the court, or the existence of any mitigating circumstances which require the reduction of the sentence, or the past conduct of the workman which may persuade the Labour court to reduce the punishment."

It may also be noticed that in Orissa Cement Ltd. v. Adikanda Sahu and in New Shorrock Mills v. Maheshbhai.T.Rao, this Court held that use of abusive language against a superior, justified punishment of dismissal. This Court stated "punishment of dismissal for using abusive language cannot be held to be disproportionate". If that be the position, regarding verbal assault, we think that the position regarding dismissal for physical assault, must be found all the more justifiable. Recently, in Muriadih Colliery BCC Ltd. v. Bihar Colliery Kamgar Union, this Court after referring to and quoting the relevant passages from Krishnakali Tea Estate v. Akhil Bharatiya Chah Mazadoor Sangh and Tournamulla Estate v. Workmen held: (SCC p.336, para 17)

> "The courts below by condoning an act of physical violence have undermined the discipline in the organisation,

> hence, in the above factual backdrop, it can never be said that the Industrial Tribunal could have exercised its authority under Section 11-A of the Act to interfere with the punishment of dismissal."

21. I shall now examine whether tested in the anvil of that decision, the punishment of dismissal of the three workmen involved in this case warrants interference by the Tribunal under Section 11A of the Act. I had already narrated the background of the misconduct and the punishment. The background of the case which refers to the workmen attending a funeral of the father of a co-worker for which permission was denied itself would be a mitigating circumstance. The only finding of fact entered by the Tribunal is that the three workers exerted some pressure on the Managing Partner to get their attendance marked. In Exts.P1 and P3, the management had no case that the workmen had used any threat, force or harsh language, neither does the Managing Partner say

otherwise as MW1. The whole incident admittedly lasted only for 15 minutes. On the other hand, the Managing Partner while giving evidence as MW1 stated that he was forced to mark their attendance as the workers detained him and he had to attend a marriage party with his wife who was waiting outside. Obviously, the managing partner was in a hurry and he did not have the patience to talk to the workmen and therefore he succumbed to the pressure of the workmen so as to get rid of them. There is also no allegation that the detention was using any kind of physical force. In such circumstances, the whole incident can only be regarded as a collective bargaining which is a right recognised in workmen by labour law which cannot, if at all, be considered as a grave misconduct attracting the penalty of dismissal from service. The petitioner also had no case that the workmen had other blemishes in their past service which also is a factor which has to be taken into account while

considering the question of punishment as is evident from the above quoted decision. Therefore, I am satisfied that the punishment of dismissal from service imposed on the three workmen for the said misconduct would certainly qualify as 'shockingly disproportionate' to the gravity of the misconduct and therefore the Industrial Tribunal was justified in interfering with the same by invoking Section 11 A of the Act.

The result of the above discussion is that I do not find any merit in the writ petition and accordingly the same is dismissed, but without any orders as to costs.

S. SIRI JAGAN,
Judge

Mbs/

S.SIRI JAGAN, J

O.P.NO.38385 OF 2002

J U D G M E N T

DATED:30.3.2007